



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: October 29, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Paul J. McGraw, DVM Administrator, Division of Animal Health *Paul J. McGraw*

SUBJECT: Chs. ATPC 10 and 12 - Animal Disease and Movement and Animal Markets, Dealers and Truckers; Scope Statement

TO BE PRESENTED BY: Dr. Paul McGraw

REQUESTED ACTION:

At the November 19, 2014, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for proposed amendments to current DATCP rule chs. ATPC 10 and 12 related to animal disease and movement and animal markets, dealers and truckers.

Division of Animal Health staff have concluded that certain provisions in chs. ATPC 10 and 12 are unclear, or inconsistent with other rule provisions, with related statute provisions, or with federal regulations. Those issues have arisen: while implementing programs with requirements specified in chs. ATPC 10 and 12; in contacts with individuals licensed through the division; or, in contacts with veterinarians and industries regulated by the division and the United States Department of Agriculture. The division has also received requests from individuals and industries to modify certain program requirements through amendments to ATPC 10 or 12.

The following subjects in chs. ATPC 10 and 12, Wis. Admin. Code, will be reviewed to address these issues, and may be modified as a result. The statutory authority to promulgate rules is identified for each subject area.

- Import requirements (see ss. 93.07 (1), (2), and (10), 95.20, 95.45 (3), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d), Wis. Stats.).
- Disease testing requirements of animals (see ss. 93.07 (1) and (10), 95.20, 95.22 (1) and (2), 95.42, 95.43, 95.45 (3), 95.55 (6), and 95.60 (4s), Wis. Stats.).
- Disease reporting requirements (see ss. 93.07 (1) and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38, 95.43, 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8) and 95.715 (2) (d), Wis. Stats.).
- Federal/state requirements for the training and certification of veterinarians in Wisconsin (see ss. 93.07 (1) and (2), 93.15, 95.22 (1) and (2), 95.38, 95.42, 95.43, and 95.60 (4s), Wis. Stats.).

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- Requirements for approval by the department for persons collecting test samples, laboratories, out-of-state forms, etc. (see ss. 93.07 (1), (2) and (10), 93.15, 95.20, 95.38, 95.42, 95.43, 95.45 (4) (c), 95.55 (6), and 95.60 (4s), Wis. Stats.).
- Recordkeeping requirements by licensees, including acceptability of electronic storage of records (see ss. 93.07 (1), (2), and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38, 95.42, 95.43, 95.45 (3), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d), Wis. Stats.).
- Application requirements and exemptions from licensing (see ss. 93.07 (1) and (2), 95.55 (6), 95.68 (2m) (b), 95.69 (2m) and 95.71 (8), Wis. Stats.).

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s. 227.135 (2), Stats.), the Governor approved this scope statement for permanent rule changes on October 8, 2014, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the November 1, 2014, issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of the scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process, and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Chs. ATP 10 and 12, Wis. Adm. Code (existing)

Relating to: Animal Disease and Movement; Animal Markets, Dealers and Truckers

1. Description of the objective of the rule:

The current rules will be reviewed to ensure provisions are clearly written and consistently stated throughout chs. ATP 10 and 12, Wis. Admin. Code. The department will make minor modifications resulting from that review.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Division of Animal Health staff have concluded that certain provisions in ATP 10 and 12 are unclear, or inconsistent with other rule provisions, with related statute provisions, or with federal regulations. Those issues have arisen: while implementing programs with requirements specified in chs. ATP 10 and 12; in contacts with individuals licensed through the division; or, in contacts with veterinarians and industries regulated by the division and the United States Department of Agriculture. The division has also received requests from individuals and industries to modify certain program requirements through amendments to ATP 10 or 12.

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As of this date, there are no existing policies and no new policies that will be incorporated into the proposed rule.

If the department does not modify current rule provisions, identified as unclear or inconsistent, it may cause difficulties for individuals or entities in Wisconsin attempting to follow rule requirements.

3. Statutory authority for the rule (including the statutory citation and language):

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

(2) Forms. To prescribe forms for all applications, notices and reports required to be made to the department or which are necessary in its work.

* * *

(10) ANIMAL HEALTH; QUARANTINE. To protect the health of animals located in this state and of humans residing in this state and to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of communicable diseases among animals. For these purposes, the department may establish, maintain, enforce, and regulate such quarantine and such other measures relating to the importation, movement, and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the department determines are necessary. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

93.15 Reports to department; inspections.

(1) The department may, by general or special order, require persons engaged in business to file with the department, at such time and in such manner as the department may direct, sworn or unsworn reports or sworn or unsworn answers in writing to specific questions, as to any matter which the department may investigate.

(2) The department or any of its authorized agents may have access to and may copy any document, or any part thereof, which is in the possession or under the control of any person engaged in business, if such document, or such part thereof, is relevant to any matter which the department may investigate.

(3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall willfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall willfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official or subordinate of the department in the exercise of the official's or subordinate's lawful authority.

95.20 Import and movement of animals. The department may prohibit or regulate the importing of animals into this state or the movement of animals within this state if the department has reasonable grounds to believe that regulation or prohibition is necessary to prevent the introduction or spread of a disease in this state that threatens the health of animals or of humans.

95.22 Reporting animal diseases.

(1) A veterinarian and the department of natural resources shall report to the department of agriculture, trade and consumer protection any disease specified in the rules promulgated under sub. (2) (a) each time a veterinarian or the department of natural resources discovers that such a disease is present in any animal in this state.

(2) The department shall promulgate rules that specify all of the following:

(a) The diseases that a veterinarian or the department of natural resources must report under this section.

(b) For each disease specified in par. (a), the deadline for reporting the disease after the date of its discovery.

(c) The information that a veterinarian or the department of natural resources must include in his or her report.

(d) Procedures to be used in preparing and submitting the report.

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95.38 Altering records; tampering with ear tags.

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(3) The department may adopt rules that are necessary to administer this section.

95.42 Revocation of permit to test. Only veterinarians approved by the department may apply the tuberculin test to cattle and farm-raised deer, and no veterinarian applying the test may tag or brand reactors except as specifically authorized or directed by the department. Any veterinarian who fails to comply with this section and the rules and instructions furnished by the department shall forfeit all right to apply the tuberculin test.

95.43 Application of brucellosis test.

(1) The brucellosis test shall be applied only by approved veterinarians. Any veterinarian who fails to comply with the laws or regulations of the department relating to disease control may be denied such approval.

(2) Every veterinarian who applies the brucellosis test shall promptly reactor tag and permanently mark all reactors in conformity with the law and the regulations of the department, and shall promptly report the result of each test to the department. No person shall interfere in any way with the identification of reactors as required herein.

95.45 Certificates of veterinary inspection; tests for interstate shipment.

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(4)(c) The department may promulgate rules to impose requirements on the form, issuance, and filing of certificates of veterinary inspection.

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95.55 Farm-raised deer.

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(6) Rules.

(a) The department shall promulgate rules to regulate persons who keep farm-raised deer. The rules shall establish disease testing requirements for bovine tuberculosis and chronic wasting disease and may establish testing requirements for other diseases.

(b) The rules promulgated under this subsection may include any of the following:

1. Standards to be followed by persons keeping farm-raised deer to prevent the spread of disease.

2. Provisions requiring that registration under this section be on an annual basis.

3. Exemptions from any annual registration requirements established under subd. 2.

95.60 Importing fish; fish farms.

* * *

(4s) The department shall do all of the following:

(a) In consultation with the department of natural resources, promulgate rules specifying requirements for the labeling and identification, in commerce, of fish reared in fish farms.

(b) In consultation with the department of natural resources, promulgate rules specifying fish health standards and requirements for certifying that fish meet those standards for the purpose of s. 29.736.

(c) Promulgate rules specifying the qualifications that a person who is not a veterinarian must satisfy in order to provide evidence of fish health.

(d) In consultation with the department of natural resources, promulgate rules specifying diseases and requirements for certifying that fish are free of those diseases for the purposes of sub. (2) (b).

(e) Promulgate rules establishing the period for which a record required under sub. (4) (c) must be retained.

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95.68 Animal markets.

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(2m) Exemptions.

(a) A person is not required to obtain a license under sub. (2) to operate an occasional auction sale sponsored by a livestock breeder association or a youth agricultural organization if records of the transactions at the sale are maintained by an auctioneer registered under ch. 480 or by an animal dealer licensed under s. 95.69.

(b) The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

* * *

(8) Rules. The department may promulgate rules to regulate the operation of animal markets, including rules related to market operator qualifications, market construction and maintenance, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

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95.69 Animal dealers.

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(2m) Exemption. The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

* * *

(8) Rules. The department may promulgate rules to regulate animal dealers, including rules related to animal dealer qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

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95.71 Animal truckers.

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(8) Rules. The department may promulgate rules to regulate animal truckers, including rules related to animal trucker qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

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95.715 Feed lots and veal lots.

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(2) Approved feed lot.

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(d) The department may promulgate rules to specify permit fees under par. (a) and to regulate feed lots. The rules may include requirements related to the construction and maintenance of approved feed lots, the segregation of imported feeder cattle and record-keeping requirements related to feeder cattle.

* * *

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.80 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

The rule will make minor modifications in order to provide consistency and clarity to chs. ATCP 10 and 12 and will provide important health protection for the Wisconsin livestock industry. This rule will have a direct impact on animal markets, animal dealers, animal truckers, veterinarians, livestock operators, and other persons licensed by the department.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:


Existing federal accreditation standards for veterinarians and animal traceability requirements will require changes in Wisconsin Administrative Rule requirements for accredited and state certified veterinarians.

Also, to comply with existing federal traceability requirements, Wisconsin administrative rules must be updated to allow only the acceptance of official, individual identification of cattle when dealing with vaccination or official disease testing.

7. Anticipated economic impact

DATCP expects the rule to have minimal to no economic impact statewide and locally.

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Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

9-5-14
Date Submitted

